

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION

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In re: KIMBERLY RUTH GRADWOHL,  
KENNETH EDWARD GRADWOHL,

BKY. No.: 04-33865  
Chapter 7

Debtors.

**NOTICE OF HEARING AND  
MOTION FOR RELIEF  
FROM AUTOMATIC STAY**

-----  
TO: KIMBERLY RUTH GRADWOHL, KENNETH EDWARD  
GRADWOHL AND THEIR ATTORNEY, DAVID J. JONES, JONES  
LAW FIRM, P.O. BOX 7014, ROCHESTER, MN 55903-7014.

1. Wells Fargo Bank, N.A. successor by merger to Wells Fargo Home  
Mortgage, Inc., by its undersigned attorneys, Reiter & Schiller, will make a motion for  
the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion on September 27, 2004 at 9:30  
A.M. in Courtroom No. 228A, at the United States Courthouse, at 316 North Robert  
Street, in St. Paul, Minnesota, or as soon as counsel may be heard before The Honorable  
Dennis D. O'Brien, United States Bankruptcy Court Judge.

3. Any response to this motion must be filed and delivered not later than  
September 22, 2004, which is three days before the time set for the hearing (excluding  
Saturdays, Sundays and holidays), or filed and served by mail not later than September  
16, 2004, which is seven days before the time set for the hearing (excluding Saturdays,  
Sundays and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS  
TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A  
HEARING.

## **MOTION TO LIFT AUTOMATIC STAY**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 7 case was filed on June 30, 2004. The case is now pending in this court.

5. This proceeding arises under 11 U.S.C. §362(d)(1), and Fed. R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9013-1 through 9013-3. Movant requests relief from the automatic stay of 11 U.S.C. §362 with respect to real property as described in Exhibit A hereto of the Debtors that is subject to a perfected security interest in favor of the Movant as shown by the term of the mortgage, a copy of which is attached hereto as Exhibit A.

6. That pursuant to the provisions of 11 U.S.C. §362(d)(1)(a), the Movant alleges "cause" for relief from the stay and is entitled to relief from the automatic stay inasmuch as:

a) That the payments due under said mortgage are in default from July 1, 2004 to date in the amount of \$943.53 per month, plus accrued late charges and inspection fees.

b) That as of the date of filing herein, the amount due under said mortgage loan was approximately \$143,000.00. The property is encumbered by a second mortgage lien in the amount of approximately \$10,000.00. According to the Debtors the fair market value of the property is estimated at \$150,000.00.

7. By reason of the foregoing, good cause exists to lift the automatic stay imposed by 11 U.S.C. §362(a) to allow the Movant to pursue its remedies under state law.

WHEREFORE, Movant, Wells Fargo Bank, N.A. successor by merger to Wells Fargo Home Mortgage, Inc., by its undersigned attorneys, moves the Court for an Order pursuant to 11 U.S.C. §362(d), granting relief from the automatic stay with respect to the real property securing the Movant's claims to permit the Movant to pursue its rights under its mortgage and applicable state law, or in the alternative for such other relief as may be just and equitable.

REITER & SCHILLER

Dated: August 30, 2004

By: /e/Thomas J. Reiter  
Thomas J. Reiter  
Rebecca F. Schiller  
Attorneys for Movant  
The St. Paul Building  
6 W. Fifth Street  
Seventh Floor  
St. Paul, MN 55102-1420  
(651) 297-6400  
Attorney Reg. 152262/231605  
(D1733)

**THIS IS A COMMUNICATION FROM A DEBT COLLECTOR.**

# VERIFICATION

I, Karan Abernethy, Bankruptcy Supervisor with Wells Fargo Bank, N. A., declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated: August 30, 2004.

WELLS FARGO BANK, N.A.

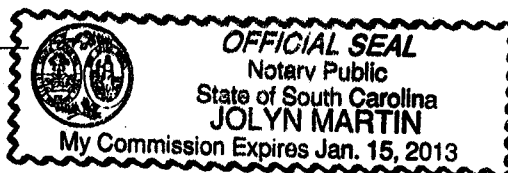
By: Karan Abernethy  
Karan Abernethy

Its: Bankruptcy Supervisor

Subscribed to and sworn before me this

30 day of August, 2004

J. Martin  
Notary Public





OFFICE OF COUNTY RECORDER  
Olmsted County, Minnesota

I hereby certify that this document was filed in this office  
on 7/10/2002 at 9:00:00 AM and was duly  
recorded as document number A-924650  
DANIEL J. HALL - County Recorder, by \_\_\_\_\_ Deputy.

Well Certificate: \_\_\_\_\_ Received \_\_\_\_\_ Not Required  
Abstr. - yes \_\_\_\_\_ no \_\_\_\_\_  
Fees:

Total \$20.00

*Danean 924649*

Received from/return to:  
OHLY LAW OFFICE

1850 NORTH BROADWAY  
ROCHESTER, MN 55906

[Space Above This Line For Recording Data]

State of Minnesota

# MORTGAGE

FHA Case No.

271-8761834

THIS MORTGAGE ("Security Instrument") is given on JUNE 28, 2002  
The Mortgagor is KIMBERLY R. GRADWOHL AND KENNETH E. GRADWOHL, WIFE AND HUSBAND

("Borrower"). This Security Instrument is given to WELLS FARGO HOME MORTGAGE, INC.

which is organized and existing under the laws of THE STATE OF CALIFORNIA,  
whose address is P.O. BOX 5137, DES MOINES, IA 503065137

("Lender"). Borrower owes Lender the principal sum of  
ONE HUNDRED FORTY THREE THOUSAND EIGHT HUNDRED SIXTY THREE AND 00/100

Dollars (U.S. \$\*\*\*\*\*143,863.00).

This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which  
provides for monthly payments, with the full debt, if not paid earlier, due and payable on JULY 01, 2032

and for interest at the yearly rate of 5.000

percent. This Security

Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals,  
extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph  
7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements

0514212

FHA Minnesota Mortgage - 4/96

VMP-4R(MN) (9702)

Page 1 of 8

Initials: *KRG*

VMP MORTGAGE FORMS - [800]521-7291 *KRG*

*2-2*  
*99720*



111PAID 7-08-02HD47

\$330.88 C

*JA*



*271-8761834*  
*DHL 7/10/02*

\*SEE ADJUSTABLE RATE RIDER

THIS IS A PURCHASE MONEY SECURITY INSTRUMENT.

TAX STATEMENTS SHOULD BE SENT TO: WELLS FARGO HOME MORTGAGE, INC., P.O. BOX  
5137, DES MOINES, IA 503065137

which has the address of 1926 43RD STREET NW, ROCHESTER  
Minnesota 55901

[Zip Code] ("Property Address");

[Street, City],

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

Borrower and Lender covenant and agree as follows:

#### UNIFORM COVENANTS.

1. **Payment of Principal, Interest and Late Charge.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and late charges due under the Note.

2. **Monthly Payment of Taxes, Insurance and Other Charges.** Borrower shall include in each monthly payment, together with the principal and interest as set forth in the Note and any late charges, a sum for (a) taxes and special assessments levied or to be levied against the Property, (b) leasehold payments or ground rents on the Property, and (c) premiums for insurance required under paragraph 4. In any year in which the Lender must pay a mortgage insurance premium to the Secretary of Housing and Urban Development ("Secretary"), or in any year in which such premium would have been required if Lender still held the Security Instrument, each monthly payment shall also include either: (i) a sum for the annual mortgage insurance premium to be paid by Lender to the Secretary, or (ii) a monthly charge instead of a mortgage insurance premium if this Security Instrument is held by the Secretary, in a reasonable amount to be determined by the Secretary. Except for the monthly charge by the Secretary, these items are called "Escrow Items" and the sums paid to Lender are called "Escrow Funds."

Lender may, at any time, collect and hold amounts for Escrow Items in an aggregate amount not to exceed the maximum amount that may be required for Borrower's escrow account under the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. Section 2601 *et seq.* and implementing regulations, 24 CFR Part 3500, as they may be amended from time to time ("RESPA"), except that the cushion or reserve permitted by RESPA for unanticipated disbursements or disbursements before the Borrower's payments are available in the account may not be based on amounts due for the mortgage insurance premium.

If the Lender's interest in this Security Instrument is held by the Secretary and the Secretary requires immediate payment in full under Paragraph 9, the Secretary may invoke the nonjudicial power of sale provided in the Single Family Mortgage Foreclosure Act of 1994 ("Act") (12 U.S.C. 3751 *et seq.*) by requesting a foreclosure commissioner designated under the Act to commence foreclosure and to sell the Property as provided in the Act. Nothing in the preceding sentence shall deprive the Secretary of any rights otherwise available to a Lender under this Paragraph 18 or applicable law.

19. **Release.** Upon payment of all sums secured by this Security Instrument, Lender shall discharge this Security Instrument without charge to Borrower. Borrower shall pay any recordation costs.

20. **Waiver of Homestead.** Borrower waives all right of homestead exemption in the Property.

21. **Interest on Advances.** The interest rate on advances made by Lender under paragraph 7 shall not exceed the maximum rate allowed by applicable law.

22. **Riders to this Security Instrument.** If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. [Check applicable box(es)].

☐ Condominium Rider

☐ Planned Unit Development Rider

☐ Growing Equity Rider

☐ Graduated Payment Rider

☒ Other [specify]

ARM RIDER

BY SIGNING BELOW, Borrower accepts and agrees to the terms contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Witnesses:

Kimberly R. Gradwohl  
KIMBERLY R. GRADWOHL

(Seal)

-Borrower

Kenneth E. Gradwohl  
KENNETH E. GRADWOHL

(Seal)

-Borrower

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION

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In re: KIMBERLY RUTH GRADWOHL,  
KENNETH EDWARD GRADWOHL,

BKY. No.: 04-33865  
Chapter 7

Debtors.

**AFFIDAVIT OF MOVANT'S  
BANKRUPTCY SUPERVISOR**

-----  
STATE OF SOUTH CAROLINA )

COUNTY OF YORK)

Karan Abernethy, being duly sworn on oath states:

1. That I am a Bankruptcy Supervisor in the Bankruptcy Department for Wells Fargo Bank, N.A. in the Fort Mill, South Carolina servicing center. In my capacity as a Bankruptcy Supervisor, I have had the opportunity to review the mortgage account of the Debtors.

2. That the payments due under said mortgage are in default from July 1, 2004 to date in the amount of \$943.53 per month, plus accrued late charges and inspection fees.

3. That as of the date of filing herein, the amount due under said mortgage loan was approximately \$143,000.00. The real property is encumbered by a second mortgage lien in the amount of approximately \$10,000.00. According to the Debtors the fair market value of the property is estimated at \$150,000.00

Further your affiant sayeth naught except that this Affidavit is made in support of the Movant's motion to lift the automatic stay for cause.

WELLS FARGO BANK, N.A.

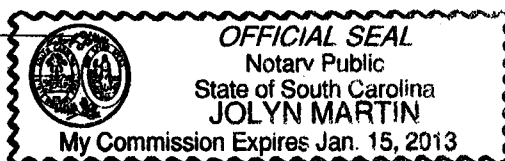
Dated: August 30, 2004

By: Karan Abernethy  
Karan Abernethy  
Bankruptcy Supervisor  
3476 Stateview Blvd.  
Fort Mill, SC 29715

Subscribed to and sworn before me this

30 day of August, 20 04

Notary J. Martin





UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION

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In re: KIMBERLY RUTH GRADWOHL,  
KENNETH EDWARD GRADWOHL,

BKY. No.: 04-33865  
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Debtors.

**MEMORANDUM IN SUPPORT  
OF MOTION FOR RELIEF  
FROM THE AUTOMATIC STAY**

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**MEMORANDUM OF LAW**

I. Factual Background

The Debtors filed their petition herein on June 30, 2004 under Chapter 7 of the Federal Bankruptcy Code and listed real property located in Olmsted County, Minnesota that is subject to a security interest held by Movant. Said real property is legally described as follows:

Lot 5, Block 3, Western First Subdivision in the City of Rochester.

The amount due under the Movant's mortgage as of the date of filing herein is approximately \$143,000.00. The property is encumbered by a second mortgage lien in the amount of approximately \$10,000.00. According to the Debtors the fair market value of the property is estimated at \$150,000.00. The payments due under said mortgage are in default from July 1, 2004 to date in the amount of \$943.53 per month, plus accrued late charges and inspection fees.

## II. Argument

### GOOD CAUSE EXISTS TO GRANT THE MOVANT RELIEF FROM THE STAY FOR CAUSE.

Section 362(d) (1) of the Bankruptcy Code, 11 U.S. C. §362 (d)(1), specifies the following conditions that must be met in order for a party in interest to be entitled to relief from the automatic stay provisions of that section:

On request of a party in interest and after notice and hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay; for cause, including the lack of adequate protection of an interest in property of such party in interest; or . . .

The Debtors have not offered any form of adequate protection to the Movant as the loan debt increases. The amount due under Movant's loan totals approximately \$153,000.00 and the fair market value of the property is estimated at \$150,000.00. The Debtors lack any equity in said real property.

In view of the Debtors' inability to make payments toward their loan obligation, the Movant's interest in the real property of the Debtors is not adequately protected. A continuing default by the Debtors will impair the Movant's interest without adequate protection or just compensation. The only protection of the Movant's interest proffered by the Debtors is for the Movant to retain its lien awaiting future mortgage payments to be made by the Debtors. The Debtors' offer of future payments will not provide adequate protection of the Movant's interest and therefore cause exists to terminate the automatic stay.

## **CONCLUSION**

For the reasons stated above, the Movant's motion to terminate the automatic stay should be granted.

REITER & SCHILLER

Dated: August 30, 2004

By: /e/ Thomas J. Reiter  
Thomas J. Reiter  
Rebecca F. Schiller  
Attorneys for Movant  
The Saint Paul Building  
6 W. Fifth Street  
Seventh Floor  
St. Paul, MN 55102-1420  
(651) 297-6400  
Attorney Reg. 152262/231605  
(D1733)

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**UNSWORN DECLARATION FOR PROOF OF SERVICE**

Thomas J. Reiter, an attorney licensed to practice law in this Court, with an office address of The St. Paul Building, 6 West 5th St., St. Paul, Minnesota 55102 declares that on September 1, 2004 he served the annexed Notice of Hearing and Motion, Memorandum, Affidavit and Proposed Order upon each of the individuals named below, to each of them a true and correct copy thereof, enclosed in an envelope, and mailed by First Class Mail with postage prepaid and depositing same in the post office at St. Paul, Minnesota.

Charles W. Ries, Trustee  
Maschka Riedy & Reis, PLLP  
P.O. Box 7  
Mankato, MN 56002-0007

United States Trustee  
1015 U.S. Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415

Kimberly Ruth Gradwohl  
Kenneth Edward Gradwohl  
2002 Texas  
Joplin, MO 64804

David J. Jones  
Jones Law Firm  
P.O. Box 7014  
Rochester, MN 55903-7014

Citifinancial  
P.O. Box 6673  
Rochester, MN 55903-6673

And I declare, under penalty of perjury, that the foregoing is true and correct.

REITER & SCHILLER

Dated: September 1, 2004

By: /e/Thomas J. Reiter

Thomas J. Reiter

Attorney at Law

6 W. Fifth Street

Seventh Floor

St. Paul, MN 55102-1420

(651) 297-6400

Attorney Reg. 152262

(D1733)

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION

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In re: KIMBERLY RUTH GRADWOHL,  
KENNETH EDWARD GRADWOHL,

BKY. No.: 04-33865  
Chapter 7

Debtors.

**ORDER TERMINATING STAY**

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This matter came on before the undersigned Judge of the above entitled Court, upon motion filed with the Court on September 27, 2004 in Courtroom No. 228A, at the United States Courthouse, at 316 North Robert Street, in St. Paul, Minnesota. The movant, Wells Fargo Bank, N.A. successor by merger to Wells Fargo Home Mortgage, Inc., was represented at the hearing by Reiter & Schiller. Other appearances, if any, are noted on the record.

Based upon all the files and proceedings herein, and the Court having considered the arguments of counsel,

IT IS HEREBY ORDERED THAT:

1. The automatic stay imposed by 11 U.S.C. §362 is hereby terminated as to the real property over which the Movant, its successors or assigns, has an interest, said property legally described as:

Lot 5, Block 3, Western First Subdivision in the City of Rochester,  
Olmsted County, Minnesota.

2. Notwithstanding Fed. R. Bankr. P. 4001 (a) (3), this order is effective immediately.

Dated: \_\_\_\_\_

\_\_\_\_\_  
The Honorable Dennis D. O'Brien  
Judge of the U.S. Bankruptcy Court